

## Overview of Case Findings Memo

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### 1. Eliminates the *Likely to Occur* finding

#### Rationale:

- Has been misunderstood and misused, resulting in an artificially inflated rate of recurrence
- The statutes require that a determination be made within 60 days as to whether abuse or neglect occurred or is likely to occur. The “likely to occur” determination is automatically made when the agency makes a determination about whether the child is safe or unsafe, which is documented in the case record in all cases of Primary Caregiver assessments.

### 2. Makes “threatened with abuse or neglect” a type of neglect

#### Rationale:

- CAPTA defines child abuse as including “an act or failure to act which presents an imminent risk of serious harm”
- This finding is counted as recurrence by ACF
- County staff agree that if they were to petition on such a case, they would petition under s.48.13(10), Stats (neglect)
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### 3. Creates a *Primary Case Finding* determination and a *Secondary Case Finding* determination

The *Primary Case Finding* determination is whether abuse or neglect occurred or is likely to occur.

The *Secondary Case Finding* determination is whether a specific person abused or neglected a child.

#### Rationale:

- They are separate decisions. One is required by law and the other is not, although it is recognized in the statutes.

### 4. Recognizes Unborn Child Abuse

Rationale: We need to address this in our policies

### 5. Supports making *Secondary Case Finding* determinations only in certain cases

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Supports making such findings in primary caregiver cases and cases of maltreatment in facilities licensed under Ch. 48. States that if an agency chooses to make such findings in non-caregiver cases and unlicensed secondary caregiver cases, the agency must conduct a complete assessment, including interviewing the alleged maltreater.

### Rationale:

- Maltreater substantiations are not required by law
- CPS, practically speaking, is most likely to need to know who maltreated a child or endangers a child in primary caregiver cases in order to adequately address safety concerns.
- Licensing and regulation staff want CPS to make maltreater substantiations in their cases to make it easier for them to revoke a license
- Law enforcement agencies are the responsible agency to handle non-caregivers who commit crimes against children.
- Appeals are an additional workload for the county agency, can further traumatize a child, and can interfere with a law enforcement investigation/prosecution

### 6. Includes additional requirements for substantiating a person as a maltreater

#### These requirements include:

- that the person have been interviewed by CPS, advised of the allegations and given an opportunity refute or explain the allegations, or
- that CPS made a significant effort to interview the person and the person refused to be interviewed, and
- that making a formal determination that the person has maltreated a child will not adversely impact a safety plan or success in achieving goals in the case plan and will not create further trauma for the child victim

### Rationale:

- CAPTA requires advising the alleged maltreater of the allegations. Additional references to training for CPS workers to assure that families' rights are protected would seem to underscore that the alleged maltreater must be interviewed prior to CPS making a formal decision, unless that person refuses to be interviewed.
- The statutory purpose of the investigation is "to determine if the child is in need of protection or services", with additional requirements to coordinate and provide needed services. Actions that have outcomes contrary to the purpose need to be avoided.

### 7. Creates a *Final Case Finding* determination

This is defined as either the determination(s) formally approved in the case record by the supervisor if there is not appeal of the decision or the determination(s) made at the final stage of the appeal process.

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Rationale:

- We need to formally recognize appeals and their impact on the substantiation decision(s)
- We need to have a consistent way in which these decisions are treated in the case record

8. States that to substantiate neglect, there should be a *pattern* of failure, inability or refusal to provide necessary care.

Rationale:

- This was the basis for overturning a neglect substantiation by DHA recently
- It seems inappropriate to substantiate someone for neglect because of an isolated incident that arose from an oversight, a lapse in memory or an isolated incident of questionable judgment.

9. States that sexual contact (not intercourse) that is mutual, with a peer and devoid of elements of actual or attempted battery must be unsubstantiated if it is within the range of normal sexual behavior for the child's age or development.

Rationale:

- This is consistent with a Wisconsin appellate court decision
- It is contrary to the best interests of a child to label normal behavior as somehow deviant